

PATENT COOPERATION TREATY

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INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY



(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

REC'D 16 DEC 2005

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Applicant's or agent's file reference	FOR FURTHER ACTION See Form PCT/PEA/416	
International application No. PCT/EP2004/011418	International filing date (day/month/year) 08.10.2004	Priority date (day/month/year) 24.10.2003
International Patent Classification (IPC) or national classification and IPC A23L1/24, A23D7/01, A23D7/02, A23D7/015		
Applicant UNILEVER N.V. et al		
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 5 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input checked="" type="checkbox"/> sent to the applicant and to the International Bureau) a total of 2 sheets, as follows:</p> <p><input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>		
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>		
Date of submission of the demand 13.06.2005	Date of completion of this report 19.12.2005	
Name and mailing address of the international preliminary examining authority:  European Patent Office - P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016	Authorized Officer Rooney, K Telephone No. +31 70 340-3931 	

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**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/EP2004/011418

Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report):*

Description, Pages

1-11 as originally filed

Claims, Numbers

1-11 received on 13.06.2005 with letter of 13.06.2005

- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

**INTERNATIONAL PRELIMINARY REPORT
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Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-11
	No: Claims	
Inventive step (IS)	Yes: Claims	
	No: Claims	1-11
Industrial applicability (IA)	Yes: Claims	1-11
	No: Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

Re Item V

**Reasoned statement with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

1 Reference is made to the following documents:

- D1 : US 5 011 701 A (BAER ET AL) 30 April 1991 (1991-04-30)
- D2 : EP 0 477 827 A (CPC INTERNATIONAL INC) 1 April 1992 (1992-04-01)
- D3 : EP 1 285 588 A (UNILEVER N.V; UNILEVER PLC) 26 February 2003 (2003-02-26)
- D4 : EP 0 949 295 A (CERESTAR HOLDING B.V; J. RETTENMAIER & SOEHNE GMBH + CO) 13 October 1999 (1999-10-13)
- D5 : WO 03/053149 A (UNILEVER N.V; UNILEVER PLC; HINDUSTAN LEVER LIMITED; FARRER, DONALD; F) 3 July 2003 (2003-07-03)

2 Inventive Step

The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claims 1 and 7 does not involve an inventive step in the sense of Article 33(3) PCT.

The document D5 discloses a composition used for producing dressings. The emulsions disclosed consist of oil, water, dairy base such as milk protein or butter milk and insoluble fibres (Herbacel). The composition is manufactured by mixing and emulsifying (see D5: page 10, paragraph 3 - page 15, paragraph 1). Since the prior art discloses methods of making edible emulsions using all of the features which the product of claim 7 relates to, it is unclear at present what surprising or unexpected effect might derive from their use, since the application as filed fails to mention such an effect.

While the conditions of claim 1 are not disclosed in the present documents, it is also not clear why they might be considered inventive since there is no particular effect associated with the collocation of the two homogenisation steps.

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(SEPARATE SHEET)**

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4 Dependent claims

Claims 2-6 and 8-11 do not appear to contain any feature which might contribute to an inventive claim since the subject-matter referred to appears to consist simply of features which exist commonly in the prior art and might be readily employed by those skilled in the art (see D1-D5: the whole documents).

Claims

1. A method for making an edible emulsion comprising insoluble fruit fibers comprising the steps:

- a) mixing, in no particular order, oil, water, dairy base, insoluble fruit fiber and emulsifier to make a coarse emulsion; and
b) recovering the coarse emulsion

wherein the coarse emulsion is homogenized in a homogenizer and the homogenizer is pressurized from about 35.0 to about 650.0 bar and at a temperature from about 15°C to about 70°C whereby the homogenization is carried out in two or more separate homogenization steps and whereby the dairy base is selected from the group consisting of yoghurt, crème fraiche, sour cream, cream, and mixtures thereof.

2. A method for making an edible emulsion according to any one of the preceding claims wherein the insoluble fruit fibers are recovered from tomatoes, peaches, pears, apples, plums, lemons, limes, oranges, grapefruits or mixtures thereof.

3. A method for making an edible emulsion according to any one of the preceding claims wherein the insoluble fruit fibers comprise citrus fruit fibers.

4. A method for making an edible emulsion according to any one of the preceding claims wherein the edible emulsion comprises from about 0.5 to about 9.0% by weight of the insoluble fruit fibers.

5. A method for making an edible emulsion according to any one of the preceding claims wherein the edible emulsion is a smooth emulsion comprising oil droplets, further wherein at least about 80.0% of all oil droplets present are less than 10.0 μm .

6. A method for making an edible emulsion according to any one of the preceding claims further comprising the step of adding acidulant wherein the acidulant is added before or after the coarse emulsion is made.

7. An edible emulsion obtainable by a method according to any one of the preceding claims.

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8. A food product comprising an edible emulsion according to claim 8.

9. The food product according to claim 9 wherein the food product has a viscosity greater than about 500 centipoise and less than about 10,000 centipoise.

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10. The food product according to any one of claims 9 and 10 wherein the food product is a dressing, soup, sauce, dip, spread, filling or drink.

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11. The food product according to any one of claims 9 to 11 wherein the food product is substantially free of carbohydrates.